

MONTANA LEGISLATIVE HISTORY

Chapter 250 19 89

Bill H _____ S 131

Original bill & history ☒ C

H. Committee on Judiciary

Hearing Date(s) Mar 08 ☒ C

_____ C

_____ C

_____ C

Date Out Mar 08 ☒ C

S. Committee on Judiciary

Hearing Date(s) Feb 10 ☒ C

_____ C

_____ C

_____ C

Feb 10 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

SENATE FINAL STATUS

MONTH AND STILL RETAIN ELIGIBILITY FOR
PUBLIC ASSISTANCE
BY REQUEST OF JOINT SUBCOMMITTEE ON WELFARE

1/14	INTRODUCED		
1/14	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/16	FISCAL NOTE REQUESTED		
1/23	FISCAL NOTE RECEIVED		
1/23	FISCAL NOTE PRINTED		
1/24	HEARING		
2/03	REVISED FISCAL NOTE REQUESTED		
2/09	REVISED FISCAL NOTE RECEIVED		
2/13	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/15	2ND READING PASSED	50	0
2/17	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/20	REVISED FISCAL NOTE PRINTED		
2/21	REFERRED TO HUMAN SERVICES & AGING		
3/10	HEARING		
3/18	COMMITTEE REPORT--BILL CONCURRED		
3/27	2ND READING CONCURRED	97	0
3/29	3RD READING CONCURRED	95	0
	RETURNED TO SENATE		
3/31	SIGNED BY PRESIDENT		
3/31	SIGNED BY SPEAKER		
3/31	TRANSMITTED TO GOVERNOR		
4/06	RETURNED TO SENATE WITH GOVERNOR'S AMENDMENTS		
4/11	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	49	0
4/13	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	47	0
	TRANSMITTED TO HOUSE		
4/15	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	95	0
4/17	TAKEN FROM 3RD READING		
4/17	2ND READING GOVERNOR'S AMENDMENTS NOT CONCURRED	98	0
	RETURNED TO SENATE		
4/20	CONFERENCE COMMITTEE APPOINTED		
	HOUSE		
4/20	CONFERENCE COMMITTEE APPOINTED		
	(GOVERNOR'S AMENDMENTS CONSIDERED NOT APPROVED BY LEGISLATURE)		
4/27	SIGNED BY PRESIDENT		
4/28	SIGNED BY SPEAKER		
5/01	TRANSMITTED TO GOVERNOR		
5/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 703 EFFECTIVE DATE: 5/22/89		

SB 131 INTRODUCED BY MAZUREK
ADOPT UNIFORM STATUTORY RULE AGAINST PERPETUITIES

SENATE FINAL STATUS

1/14	INTRODUCED		
1/14	REFERRED TO JUDICIARY		
2/10	HEARING		
2/11	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/14	2ND READING PASSED	47	0
2/16	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		
2/21	REFERRED TO JUDICIARY		
3/08	HEARING		
3/08	COMMITTEE REPORT--BILL CONCURRED		
3/11	2ND READING CONCURRED	86	3
3/13	3RD READING CONCURRED	96	1
	RETURNED TO SENATE		
3/16	SIGNED BY PRESIDENT		
3/16	SIGNED BY SPEAKER		
3/17	TRANSMITTED TO GOVERNOR		
3/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 250		
	EFFECTIVE DATE: 10/01/89		

SB 132 INTRODUCED BY MAZUREK
 GENERALLY REVISE COLLECTION OF DELINQUENT PROPERTY
 TAXES; DEFINE THE TERM "COST"

1/14	INTRODUCED		
1/14	REFERRED TO TAXATION		
1/18	HEARING		
2/10	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/14	2ND READING PASSED	46	1
2/16	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		
2/21	REFERRED TO TAXATION		
3/07	HEARING		
4/01	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
4/06	2ND READING CONCURRED AS AMENDED	95	4
4/07	3RD READING CONCURRED	95	3
	RETURNED TO SENATE WITH AMENDMENTS		
4/11	2ND READING AMENDMENTS NOT CONCURRED	49	0
4/12	CONFERENCE COMMITTEE APPOINTED		
4/18	CONFERENCE COMMITTEE REPORT NO. 1		
4/19	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	50	0
4/19	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48	2
	HOUSE		
4/13	CONFERENCE COMMITTEE APPOINTED		
4/18	CONFERENCE COMMITTEE REPORT NO. 1		
4/19	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	84	9
4/20	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	89	5
4/26	SIGNED BY PRESIDENT		
4/28	SIGNED BY SPEAKER		
5/01	TRANSMITTED TO GOVERNOR		
5/22	SIGNED BY GOVERNOR		

1 *Senate* BILL NO. 131
2 INTRODUCED BY *Thompson*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING ARTICLE
5 XIII, SECTION 6, OF THE MONTANA CONSTITUTION BY ADOPTING THE
6 UNIFORM STATUTORY RULE AGAINST PERPETUITIES; AND REPEALING
7 SECTIONS 70-1-406 THROUGH 70-1-410, MCA."
8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10 NEW SECTION. **Section 1.** Short title. [This act] may
11 be cited as the "Uniform Statutory Rule Against
12 Perpetuities".
13 NEW SECTION. **Section 2.** Statutory rule against
14 perpetuities. (1) A nonvested property interest is invalid
15 unless:
16 (a) when the interest is created, it is certain to
17 vest or terminate no later than 21 years after the death of
18 an individual then alive; or
19 (b) the interest either vests or terminates within 90
20 years after its creation.
21 (2) A general power of appointment not presently
22 exercisable because of a condition precedent is invalid
23 unless:
24 (a) when the power is created, the condition precedent
25 is certain to be satisfied or become impossible to satisfy

1 no later than 21 years after the death of an individual then
2 alive; or
3 (b) the condition precedent either is satisfied or
4 becomes impossible to satisfy within 90 years after its
5 creation.
6 (3) A nongeneral power of appointment or a general
7 testamentary power of appointment is invalid unless:
8 (a) when the power is created, it is certain to be
9 irrevocably exercised or otherwise to terminate no later
10 than 21 years after the death of an individual then alive;
11 or
12 (b) the power is irrevocably exercised or otherwise
13 terminates within 90 years after its creation.
14 (4) In determining whether a nonvested property
15 interest or a power of appointment is valid under subsection
16 (1)(a), (2)(a), or (3)(a), the possibility that a child will
17 be born to an individual after the individual's death is
18 disregarded.
19 NEW SECTION. **Section 3.** When nonvested property
20 interest or power of appointment created. (1) Except as
21 provided in [Section 5] and subsections (2) and (3) of this
22 section, the time of creation of a nonvested property
23 interest or a power of appointment is determined under
24 general principles of property law.
25 (2) For purposes of [this act], if there is a person

who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of a nonvested property interest or a property interest subject to a power of appointment described in [section 2(2) or (3)], the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(3) For purposes of [this act], a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

NEW SECTION. Section 4. Reformation. Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and that is within the 90 years allowed by [section 2(1)(b), (2)(b), or (3)(b)] if:

(1) a nonvested property interest or a power of appointment becomes invalid under [section 2];

(2) a class gift is not but might become invalid under [section 2] and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) a nonvested property interest that is not validated by [section 2 (1)(a)] can vest but not within 90 years after its creation.

NEW SECTION. Section 5. Exclusions from statutory rule against perpetuities. [Section 2] does not apply to:

(1) a nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of a:

(a) premarital or postmarital agreement;
(b) separation or divorce settlement;
(c) spouse's election;
(d) similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;

(e) contract to make or not to revoke a will or trust;
(f) contract to exercise or not to exercise a power of appointment;

(g) transfer in satisfaction of a duty of support; or
(h) reciprocal transfer;

(2) a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

(3) the power to appoint a fiduciary;

1 (4) a discretionary power of a trustee to distribute
2 principal before termination of a trust to a beneficiary
3 having an indefeasibly vested interest in the income and
4 principal;

5 (5) a nonvested property interest held by a charity,
6 government, or governmental agency or subdivision if the
7 nonvested property interest is preceded by an interest held
8 by another charity, government, or governmental agency or
9 subdivision;

10 (6) a nonvested property interest in or a power of
11 appointment with respect to a trust or other property
12 arrangement forming part of a pension, profit-sharing, stock
13 bonus, health, disability, death benefit, income deferral,
14 or other current or deferred benefit plan for one or more
15 employees or independent contractors, or their beneficiaries
16 or spouses, to which contributions are made for the purpose
17 of distributing to or for the benefit of the participants or
18 their beneficiaries or spouses the property, income, or
19 principal in the trust or other property arrangement, except
20 a nonvested property interest or a power of appointment that
21 is created by an election of a participant or a beneficiary
22 or spouse; or

23 (7) a property interest, power of appointment, or
24 arrangement that was not subject to the common-law rule
25 against perpetuities or is excluded by another statute of

1 this state.

2 NEW SECTION. **Section 6. Prospective application.** (1)
3 Except as extended by subsection (2), [this act] applies to
4 a nonvested property interest or a power of appointment
5 created on or after [the effective date of this act]. For
6 purposes of this section, a nonvested property interest or a
7 power of appointment created by the exercise of a power of
8 appointment is created when the power is irrevocably
9 exercised or when a revocable exercise becomes irrevocable.

10 (2) If a nonvested property interest or a power of
11 appointment was created before [the effective date of this
12 act] and is determined in a judicial proceeding commenced on
13 or after [the effective date of this act] to violate this
14 state's rule against perpetuities as that rule existed
15 before [the effective date of this act], a court, upon the
16 petition of an interested person, may reform the disposition
17 in the manner that most closely approximates the
18 transferor's manifested plan of distribution and that is
19 within the limits of the rule against perpetuities
20 applicable when the nonvested property interest or power of
21 appointment was created.

22 NEW SECTION. **Section 7. Uniformity of application and**
23 **construction.** [This act] must be applied and construed to
24 effectuate its general purpose to make uniform the law with
25 respect to the subject of [this act] among the states

LC 0922/01

1 enacting it.

2 NEW SECTION. **Section 8.** Repealer. Sections 70-1-406

3 through 70-1-410, MCA, are repealed.

-End-

For that reason, he felt the bill should be accepted by the committee.

DISPOSITION OF SENATE BILL 333

Discussion: Valencia Lane said there was an amendment correcting some typographical errors.

Amendments and Votes: Senator Mazurek MOVED to amend the bill as suggested by the Law School (Exhibit 2). The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator MAZUREK MOVED that Senate Bill 333 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON SENATE BILL 131

Presentation and Opening Statement by Sponsor: Senator Mazurek of Helena, District 23, said this bill was worked on by the same committee and was to generally revise the uniform statutory rule against perpetuities to overturn some of the inequities in the law for the unsuspecting.

List of Testifying Proponents and What Group they Represent:

Ed Eck, U. M. Law School Professor

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Ed Eck presented written testimony to the committee. (See Exhibit 3)

Questions From Committee Members: None

Closing by Sponsor: Senator Mazurek said he concurred with the amendments proposed by Ed Eck and closed the hearing.

DISPOSITION OF SENATE BILL 131

Amendments and Votes: Senator Mazurek MOVED the amendments (Exhibit 4). The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Mazurek MOVED that Senate Bill 131 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON SENATE BILL 331

Presentation and Opening Statement by Sponsor: Senator Al Bishop of Billings, District 46, opened the hearing said his bill was an act to generally revise the uniform probate code and related law. He said he had been practicing law since 1952, before the probate code was enacted in 1974. His practice was basically in the probate field. He said before 1974, probate codes were difficult. In 1974, his law partner, Bob Hendrickson worked on a committee to draw up the law. He said there was a lot of resistance to the code because of fear of the unknown, especially how it would affect the attorneys' fees. But it resulted in simplification, made the process easier with no cost to the lawyers. The uniform probate code made it difficult for a lawyer to make a major mistake, he said. He distributed an amendment to committee members (Exhibit 5) and asked the committee to study it. He said the revision of the code came from amendments made by the uniform commissioners in 1987 from the national probate code and from Professor Eck's experience.

List of Testifying Proponents and What Group they Represent:

Ed Eck, UM Law School Professor
Dan McLane, Chairman of the Tax Probate Section

List of Testifying Opponents and What Group They Represent:

Walter Murfitt, Helena Attorney

Testimony:

Professor Eck presented written testimony to the committee (see Exhibit 6). He said there were three sources of amendment: The National Probate Code, lawyers and the law school. It was endorsed by the Tax and Probate Section Commissioners and the State Bar, he said.

SENATE STANDING COMMITTEE REPORT

February 10, 1988

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 131 (first reading copy -- white), respectfully report that SB 131 be amended and as so amended do pass:

1. Title, line 7.
Following: "THROUGH"
Strike: "70-1-410"
Insert: "70-1-418"

2. Page 7, line 3.
Following: "through"
Strike: "70-1-410"
Insert: "70-1-418"

AND AS AMENDED DO PASS

Signed: 
Bruce D. Clippco, Chairman

P.C.
2/10/88
3:45
P.H.

E. Edwin Eck
University of Montana
School of law

UNIFORM STATUTORY RULE AGAINST PERPETUITIES
Senate Bill No. 131

English Common Law Rule: "No interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest."

Purpose: Prevent property from being tied up for too long a time in trusts.

Example 1. A will has a clause which reads: "To those of my issue alive when the probate of my estate is complete."

Example 2. A trust reads: "Income to my aged Aunt Mabel for her lifetime, then income to Mabel's children, and upon the death of the surviving child, the trust is to terminate and the trust be distributed equally to Mabel's then living grandchildren." Mabel is 80 years of age and has two children in their 50's.

Both examples have provisions which violate the traditional English common law rule because of some very remote contingencies.

Criticisms:

1. Traditional English common law rule voids certain interests in property because of very remote possibilities.

2. Traditional English common law rule is very complex in its application. Even many professionals cannot apply the rule successfully.

Professor Gray:

"There are few lawyers of any practice in drawing wills. . . who have not at some time either fallen into the net which the rule [against perpetuities] spreads for the unwary, or at least shuddered to think how narrowly they have escaped it."¹

Professor Leach described the rule as a "technicality-ridden legal nightmare" and a "dangerous instrumentality in the hands of

1. Gray, The Rule Against Perpetuities p. xi (4th ed. 1942).

most members of the bar."²

Solution: Uniform Statutory Rule Against Perpetuities

1. Is the interest valid under the traditional English common law rule? If so, the interest is still valid.

2. If the interest is not valid under the traditional English common law rule, wait and see if valid within 90 year waiting period.

3. In the rare circumstance that the interest is still not valid, the district court can reform the disposition in a manner that most closely approximates the transferor's intention.

Amendment: Repeal the related rule on accumulation of trust income and the rule against undue suspension of the power of alienation.

2. Leach, Perpetuities Legislation 67 Harv. L.Rev. 1349 (1954).

SENATE JUDICIARY

EXHIBIT NO. 4

DATE 2-10-89

BILL NO. SB131

Motion

Amendments to Senate Bill No. 131
First Reading Copy (WHITE)

Requested by Senator Mazurek (and Prof. Ed Eck)
For the Committee on Judiciary

Prepared by Valencia Lane
February 9, 1989

1. Title, line 7.
Following: "THROUGH"
Strike: "70-1-410"
Insert: "70-1-418"

2. Page 7, line 3.
Following: "through"
Strike: "70-1-410"
Insert: "70-1-418"

HEARING ON SENATE BILL 131

Presentation and Opening Statement by Sponsor:

Sen. Joe Mazurek, Senate District 23, indicated SB 131 is a bill concerned with the rule against perpetuities. He stated it is a rule that has existed since the common law, it is a trap for unwary lawyers, it has outlived its usefulness, and Article XIII, section 6, of the Montana Constitution specifically prohibits perpetuities, except in cases of charitable interests. Sen. Mazurek indicated this bill goes hand in hand with SB 333. He further stated the rule against perpetuities is a rule of law which protects against tying up future interests in property forever and requires a contingent interest to vest within a given time. The problem with the common law rule as it exists across the land is if you violate the rule in drafting, whatever you do is void. This bill modernizes that. It keeps the rule and continues to prevent perpetuities, but it adopts the 90-year wait-and-see approach instead of voiding things at the time of drafting because of an error in drafting. It is a uniform act that has been proposed by the National Conference of Commissioners on Uniform State Laws [NCCUSL] and was considered part of the package with the trust law revisions and probate provisions which will be heard next.

Testifying Proponents and Who They Represent:

Professor E. Edwin Eck, University of Montana School of Law

Proponent Testimony:

Professor E. Edwin Eck, University of Montana School of Law, presented written testimony in support of SB 333 (EXHIBIT 2). He stated the State Bar of Montana Trust Law Revision Committee was also in favor of this bill.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions from the Committee: No questions were asked.

Closing By Sponsor: Sen. Mazurek closed the hearing.

DISPOSITION OF SENATE BILL 131

Motion: Rep. Wyatt moved SB 131 BE CONCURRED IN. Rep. Eudaily seconded the motion.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Motion CARRIED unanimously for SB 131 BE CONCURRED IN.

HEARING ON SENATE BILL 331

Presentation and Opening Statement by Sponsor:

Sen. Al Bishop, Senate District 46, stated SB 331 revises the Montana Uniform Probate Code to bring it in line with the NCCUSL recommendations and with the uniform code. A lot of this bill is cleanup language. In addition, the Uniform Transfers to Minors Act presently provides that at 18, they become entitled to that property. This bill amends that to include those who are 18, 19, and 20 years old to make it more desirable for people to put money in to make the transfers under the Uniform Transfers to Minors Act.

Testifying Proponents and Who They Represent:

Professor E. Edwin Eck, University of Montana School of Law

Proponent Testimony:

Professor E. Edwin Eck, University of Montana School of Law, presented written testimony in support of SB 331 (EXHIBIT 3). He indicated this act consists of 30 separate substantive provisions which in one sense are not related at all except they deal with death, dying, and taxes, but there's no overwhelming common theme.

Testifying Opponents and Who They Represent:

Walter S. Murfitt, Helena Attorney

STANDING COMMITTEE REPORT

March 8, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
SENATE BILL 131 (third reading copy -- blue) he concurred in .

Signed: _____
Dave Brown, Chairman

[REP. McDONOUGH WILL CARRY THIS BILL ON THE HOUSE FLOOR]

E. Edwin Eck
University of Montana
School of law

UNIFORM STATUTORY RULE AGAINST PERPETUITIES
Senate Bill No. 131

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EXHIBIT 2
DATE 3-8-89
88 131

most members of the bar."²

Solution: Uniform Statutory Rule Against Perpetuities

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2. Leach, Perpetuities Legislation 67 Harv. L.Rev. 1349 (1954).